REMARKS

Claims 1, 18-22, 43-51, and 53-161 were rejected under 35 USC §101, because the Examiner believed the claims were directed to non-statutory subject matter as directed by "Clarification of 'Processes' under 35 USC 101" issued May 15, 2008.

First, the Examiner has misconstrued "Clarification of 'Processes' under 35 USC 101" and violated the requirements of the MPEP. The memorandum specifically requires that if the Examiner determines that the claimed method is ineligible the "inquiry proceeds to [determine whether it covers either a 35 U.S.C. 101 judicial exception or a practical application of a 35 U.S.C. 101 judicial exception]." (See *Clarification of 'Processes' under 35 USC 101"quoting Interim Guidelines, MPEP 2106.IV.C.*) A claimed invention is directed to a practical application of a 35 U.S.C. 101 judicial exception when it: (A) "transforms" an article or physical object to a different state or thing; or (B) otherwise produces a useful, concrete and tangible result. The Examiner failed to make such an inquiry as required by the MPEP. Specifically, the claims are mostly directed at processing full-surround image data to transform the data into a useful format. The resulting data format is useful, concrete, and tangible (e.g. displayed).

Second, neither the memorandum nor the MPEP can modify federal law. As a matter of law, method claims for data processing, such as claimed here, have been long held to be patentable. See *AT&T Corp v. Excel Communications, Inc.*, 172 F.3d 1352 (Fed. Cir. 1999); *State St. Bank & Trust Co. v. Signature Financial Group*, 149 F.3d 1368 (Fed. Cir. 1998).

See also *Diamond v. Diehr*, 450 US 175 (1981) and *Arrhythmia Research Technology v. Corazonix Corp.*, 958 F.2d 1053 (Fed. Cir. 1992).

Third, image data processing patents, including method claims, continue to be issued. See for example US 7,430,334; US 7,430,316; and US 7,429,963; all issued on September 30, 2008. Claims with identical language have been allowed including US 7,373,012; US 7,200,251; US 7,113,654; US 6,271,853; and US 6,243,099.

The claims are allowable under 35 USC §101. Data processing has long been recognizable as patentable subject matter. Image data processing patents continue to be issued. The cited memorandum cannot change federal law. The Examiner's actions violate the MPEP, and the denial of a patent citing the memorandum violates federal law, which specifically recognizes the patentability of data processing claims, and image processing claims in particular.

Conclusion

Thus, all grounds of rejection and/or objection are traversed or accommodated, and favorable reconsideration and allowance are respectfully requested. The Examiner is requested to telephone the undersigned attorney or Robert Groover for an interview to resolve any remaining issues.

October 20, 2008

Respectfully submitted,

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